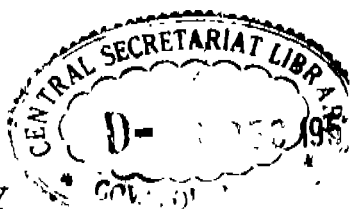


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No. 571] NEW DELHI, THURSDAY, DECEMBER 5, 1957/AGRAHAYANA 14, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 28th November 1957/7th Agrahayana 1879 Saka

S.R.O. 3903.—Where as the election of Shri P. Kunhan and Shri V. Eacharan as members of the Lok Sabha from the Palghat constituency of that Sabha was called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri K. Damodaran, residing at Nangakkil, Eastern Nada, Guruvayoor;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Election Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal

BEFORE THE ELECTION TRIBUNAL, KOZHIKODE

PRESENT:

Mrs. Anna Chandy, M.A., B.L., Member, Election Tribunal.

Thursday, the 7th day of November 1957

ELECTION PETITION No. 262 OF 1957.

Sri K. Damodaran—*Petitioner.*

Vs.

1. Sri P. Kunhan.
2. Sri V. Eacharan.
3. Sri P. Vasu Menon.
4. Sri M. Chadayan.
5. Sri T. Muhammad Ismail—*Respondents.*

This petition coming on for hearing on the 8th, 9th, 23rd, 24th, 29th and 30th days of October 1957, before me in the presence of Sri K. Kunhirama Menon, Advocate for Sri S. Easwara Iyer, Sri P. K. Kunhirama Poduval and Sri K. C. Kunhunni, Advocates for the petitioner; of Sri G. V. Ramanan and

Sri G. S. Krishna Iyer, Advocates for the 2nd respondent; of Sri T. Narayanan Nambiar, Sri K. K. Marar and Sri P. M. Vardhamanan, Advocates for the 4th respondent; and the other respondents being absent, and having stood over to this day for consideration, the Tribunal passed the following.

ORDER

This election petition is filed by Sri K. Damodaran, who was one of the candidates for election to the House of the People held in 1957 from the double member Palghat Parliamentary constituency, challenging the election of respondents 1 and 2, the returned candidates. Of the six candidates for the constituency, the persons who contested for the "reserved seat" for the Scheduled Castes were the 1st respondent Sri Kunhan, the 2nd respondent Sri V. Eacharan and the 4th respondent Sri M. Chadayan, and those for the General Seat were the petitioner, the 3rd respondent Sri P. Vasu Menon and the 5th respondent Sri T. Muhammad Ismail. The 1st respondent got the largest number of votes viz., 2,33,807 and was elected for the reserved seat. The 2nd respondent though a candidate for the reserved seat having secured the next largest number of votes viz., 1,86,594 was declared elected for the general seat. The petitioner secured the third highest number of votes viz., 1,85,662, which is only 900 and odd votes less than the 2nd respondent. The 4th respondent got 91,922 votes. It is the petitioner's case that the 4th respondent, Sri Chadayan who contested for the reserved seat as an Adi Dravida is not an Adi Dravida but a 'Pulaya' who is excluded from the category of Scheduled Castes so far as the Malabar District is concerned, by the Constitution (Scheduled Castes) Order, 1950 and as such not entitled to file his nomination paper for the reserved seat. The objection to the nomination paper was raised at the time of scrutiny but was not accepted by the Returning Officer. The improper acceptance of the nomination paper of the 4th respondent for the reserved seat has according to the petitioner caused a division of the votes polled by the contesting candidates, and the petitioner claims that a substantial portion, if not the entire votes polled by the 4th respondent would have been secured by him, in which case he would have been declared to be the returned candidate for the general seat. The improper acceptance of the nomination paper of the 4th respondent has according to him thus materially affected the result of the election. Hence it is prayed that (a) the election of respondents 1 and 2 be declared to be void and (b) that the petitioner be declared duly elected for the general seat.

2. Respondents 1, 3 and 5 remained *ex parte*. The 2nd respondent contended that the 4th respondent can at the same time be an "Adi Dravida" as well as a "Pulaya" and as such there was nothing wrong in his having described himself as an Adi Dravida in the nomination paper, and the acceptance of the nomination paper for the reserved seat was only proper. Even assuming such acceptance to be improper, it is denied that it has caused a division of the votes polled for the contesting candidates, and that the petitioner would have obtained the entire or at least a portion of the votes polled by the 4th respondent. Hence the acceptance of the nomination paper has not materially affected the result of the election.

3. The 4th respondent denied the allegation that he belongs to the Pulaya community and asserted that he belongs to the Adi Dravida community by birth, by profession and public recognition and as such was fully qualified to contest the election for the reserved seat. His nomination paper was properly accepted. The petitioner who did not object to the nomination at the time of scrutiny was estopped from raising the objection at a later stage. It is also urged that it was not open to the petitioner who was nominated for the general seat to object to the validity of the nomination of the 4th respondent for the reserved seat. He too denied the allegation that had his nomination been not accepted

the petitioner would have been elected or had a chance of being elected. Both of them had objected to the maintainability of the petition on the ground that the petitioner had not complied with the requirements of Section 117 of the Representation of the People Act.

4. On these contentions the following issues were raised:

1. Is the 4th respondent not an Adi Dravida? Is he not a member of the Scheduled Caste?
2. Is he a Pulaya of the Malabar District? Is he estopped by conduct and profession from contending that he belongs to a community other than the Pulaya community of Malabar?
3. Was not the 4th respondent fully qualified to be chosen to fill the reserved seat in the Palghat Parliamentary Constituency?
4. Was the acceptance of the nomination paper of the 4th respondent improper?
5. If it was improper, has the result of the election been materially affected thereby?
6. Is the petitioner estopped from raising objection to the nomination since he failed to do so at the time of scrutiny?
7. Is the petitioner competent to maintain the petition on the grounds alleged by him?
8. Has the petitioner complied with the requirements of Section 117 of the Representation of the People Act, 1951 (Act 43 of 1951)? If not, is the petition liable to be dismissed?
9. Is the petitioner entitled to a declaration that the election of respondents 1 and 2 is void? If so, is he entitled to a further declaration that he has been duly elected for the General Seat?
10. What would be the order regarding costs of this petition?

5. P.Ws. 1 to 5 were examined for the petitioner and D.Ws. 1 to 4 were examined for the respondents. Exhibits A-1 to A-18 and B-1 to B-32 were filed.

6. *Issue 8.*—Section 117 of the Representation of the People Act enjoins that the petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. In this case the petitioner has deposited Rs. 1,000 in the District Treasury at Trivandrum and enclosed a chalan for the same. However as the chalan does not indicate that the deposit was made in favour of the Secretary to the Election Commission it is contended that the deposit is not valid. In the "Hand Book for Candidates" the Election Commission prescribed the head for crediting the deposit of security in the Government accounts and the deposit made by the petitioner is in accordance with it. A communication was sent from this Tribunal to the Comptroller of Kerala to ascertain if the deposit under this head would ensure to the benefit of the Secretary to the Election Commission and a reply was received that the petitioner may inform the Treasury Officer that the amount deposited was in favour of the Secretary to the Election Commission. Such an application has been obtained and forwarded. The Treasury Deputy Collector, Trivandrum has informed this Tribunal that necessary additions in the accounts have been effected in accordance with the prayer of the petitioner. Hence I find that the deposit made by the petitioner is in substantial compliance with the provisions of Section 117 of the Representation of the People Act and it is valid.

7. *Issues 1 to 4.*—The next question for consideration is whether the acceptance of the nomination paper of the 4th respondent was improper or not. Exhibit A-4 is the nomination paper filed by the 4th respondent. The paper contains a declaration that he belongs to the Adi Dravida caste which is a scheduled caste in the Cannanore District, Madayi amsom to which 4th respondent belongs. The Constitution (Scheduled Castes) Order, 1950 includes Adi Dravida in the list of Scheduled Castes in Malabar District. The nomination was objected to by 2nd respondent and one Sri Kunhunni who were also candidates for the reserved seat on the ground that Shri Chadayan belongs to the Pulaya community of Malabar which was classified as a Scheduled Tribe and not a Scheduled Caste and as such he cannot contest for a seat reserved for the Scheduled Castes. Exhibit A-5, the proceedings of the Returning Officer shows that the objection was overruled on the production of a certificate of caste from the Sub-Collector, Tellicherry, to the effect that Shri Chadayan belongs to the Adi Dravida community of the Scheduled Castes. Exhibit A-8 is the certificate. So the primary question for consideration is whether Shri Chadayan belongs to the Adi Dravida community or not. Shri Chadayan has given evidence in this enquiry as R.W. 1. He swears that he belongs to the Adi Dravida community that he has been describing himself as such in registered documents consistently from the year 1927, that he was the member of the Vengara Adi Dravida Aykia Nanaya Sangam from its inception in 1927 and its president from 1943, that he was a member of the Legislative Assembly in 1951 and of the Malabar District Board earlier as a member of the Scheduled Caste and that he contested the 1957 election for the State Assembly from the Manjeri reserved seat as an Adi Dravida, and his nomination was not objected to by the contesting communist candidate or any one else. Exhibits B-1 and B-3 to B-10 are registered documents executed by strangers in favour of the 4th respondent. Exhibit B-2 is the copy of a registered document executed by 4th respondent to a stranger. In all these documents the 4th respondent is described as an Adi Dravida. The documents range from the year 1933 to 1947. Exhibit B-11 is the minutes book of the Vengara Adi Dravida Aykia Nanaya Sangam from its inception in 1927 and the 4th respondent is member No. 16. Exhibit B-12 is the minutes book of the Sangam for the years 1935 to 1956. All the members of the society belonged to the Adi Dravida Community. Exhibit B-13 is the share register and No. 16 is the 4th respondent. Exhibit B-14 is the Post Office Savings Bank pass book of the Society in the name of the 4th respondent as president. Exhibit B-25 series are the security bonds executed by the members of the Society in favour of the president for taking loans. All the members describe themselves as belonging to the Adi Dravida caste. Exhibit B-26 is the certified extract of the entries in the electoral roll of Payyannoor Assembly constituency, Madras State for 1951 relating to the 4th respondent wherein he is described as a scheduled caste. Exhibits B-16 to B-20 and B-22 to 24 are registered documents executed by strangers in favour of the 4th respondent's younger brother Ramana who has been examined as R.W. 2, and Exhibit B-21 is a registered document executed by R.W. 2 to a stranger. In all these documents R.W. 2 has been described as an Adi Dravida. R.W. 2 is also the secretary of the Vengara Adi Dravida Aykia Nanaya Sangam. R.W. 3 gives evidence that the karnavan of the 4th respondent has married his sister. Exhibit B-31 is the Teachers' Certificate issued to him in 1932 wherein he is described as an Adi Dravida by caste. R.W. 4 is another relation of the 4th respondent. His uncle had married the 4th respondent's maternal aunt's daughter. He gives evidence that himself and the 4th respondent belong to the Adi Dravida caste. In Exhibit B-32 the S.S.L.C. certificate issued to him in 1939 his caste is given as Adi Dravida. The petition would contend that the 4th respondent is a Pulaya by caste and as the Pulayas of the Malabar District are not included in the category of Scheduled Castes the nomination of 4th respondent was improperly accepted for the reserved seat. The case of the petitioner is that Adi Dravida

is a generic term used to denote several castes which are commonly classified as Harijans or depressed classes which may take in Pulayas as well, but as a Pulaya of Malabar has been specifically excluded by the Constitution (Scheduled Castes) Order, the 4th respondent who is a Pulaya is not an Adi Dravida as contemplated by the Scheduled Castes Order. In the absence of any data in the Scheduled Castes Order or elsewhere defining the term Adi Dravida as used in the Order, any attempt to define the term on the basis of the oral evidence in the case is not proper. As argued by the learned counsel for the 4th respondent it is quite possible that as there is no class by name Adi Dravida in the Travancore-Cochin area Pulaya has to be specified as a member of the Scheduled Caste and Pulayas of Malabar came to be excluded because the term Adi Dravida took in Pulayas as well. It is an anomalous situation which may be clarified. But that question assumes little importance in this case where the petitioner's case that the 4th respondent is a Pulaya remains unproved. To establish the case that the 4th respondent is a Pulaya the petitioner relied upon the oral evidence of P.Ws. 1 to 3 and Exhibits A-1 to A-3 and A-10 to A-14. P.W. 1 is the petitioner. The petitioner swears that he came to know of the 4th respondent in his capacity as a public worker and his information is that the 4th respondent is a Pulaya. His cross-examination reveals that his knowledge about the 4th respondent's caste is based upon hearsay evidence and that he had no opportunity to have a correct knowledge about it. P.W. 2 is a Pulaya who has become a convert to Christianity since ten years past. He swears that the 4th respondent's mother-in-law is his uncle's daughter and that the 4th respondent is a Pulaya. He admits in cross-examination that he is a member of the Madayi Adi Dravida Aykia Nanaya Sangam and Exhibit B-28 is the bond filed by him. In Exhibit B-28 he is described not as a Pulaya but as an Adi Dravida and when questioned about it he states that it was a mistaken description. He even goes to the extent of saying that there are no Adi Dravidas in Vengara to which place the Sangam of which he is a member belonged, or at Madayi to which village the 4th respondent belonged. It is the definite case of the 4th respondent that the witness is a communist and a friend of the petitioner though this suggestion is not accepted by the witness. P.W. 3 is one who belongs to Madayi amson. He gives evidence that he knows the 4th respondent and his family for a long time and they are Pulayas. He goes to the extent of saying that in Madayi amson Pulayas alone are known as Adi Dravidas. He admits that he is friendly with the petitioner though he would deny the suggestion that he is a communist. In his anxiety to deny the suggestion he would go to the extent of saying that to his knowledge there are no communists at all in Madayi. He admits that his daughter-in-law is the niece of T. T. Govindan Nair though he would plead ignorance of the fact that there are litigations between the 4th respondent and this Govindan Nair. The 4th respondent gives evidence that there are civil cases between him and Govindan Nair. It is not possible to act on the interested oral evidence of these witnesses, in finding that the 4th respondent is a Pulaya. P.W. 4 is a clerk in the B.E.M. Girls' High School, Kozhikode. She was cited to produce Exhibits A-10 to A-13. Exhibit A-10 is the application form of P. Kamalakshy, the daughter of the 4th respondent for admission to the II form in the above school dated 2nd July 1954. There the 4th respondent is described as Harijan-Pulaya. The same description is copied in Exhibit A-11 Register of Admissions and Withdrawals and in the transfer certificate Exhibit A-12(a). Exhibit A-10 application is signed by one Mrs. K. Padmavathi Prabhu as guardian and not by the 4th respondent. The 4th respondent gives evidence that he is not acquainted with this lady, and that it was not he but the Harijan Seva Sangam president at his request that got his daughter admitted to the Balika Sadanam of which Mrs. Prabhu was the superintendent. In the face of this evidence and the absence of the evidence of Mrs. Prabhu as to the source of the information of which she made the entry in the application, it is not possible to attach much eviden-

tiary value to that statement, much less to hold the 4th respondent responsible for the information contained therein. It is also to be noted that in Exhibit A-13 the record sheet of the student maintained in the former school in which she studied the student and her father are described as Harijans and not as Pulayas. Exhibit A-1 is the registration copy of a sale deed of the year 1928 executed by the Karnavan of the 4th respondent in favour of the 4th respondent wherein both the assigner and the assignee are described as Pulayas. Exhibit A-2 the registration copy of a lease deed executed by a stranger in favour of the 4th respondent in 1931 where also the 4th respondent is described as Pulaya. Exhibit A-3 is the registration copy of a lease deed executed by the 4th respondent in favour of a stranger in 1933. There also the 4th respondent is described as a Pulaya. The petitioner relies on the descriptions given in these documents to prove his case that the 4th respondent is a Pulaya. The 4th respondent gives evidence that the document writers were responsible for the description, and that he had no chance of being appraised of the description because those were days when depressed classes like him were treated as untouchables and denies admission to the document writer's office and sub-registry offices. He further swears that he learned to read and write Malayalam only as late as the year 1930. It is seen from Exhibits B-1 to B-10 that ever since the year 1933 the 4th respondent was consistently describing himself as Adi Dravida and as such it is not likely that the description given in Exhibits A-1 to A-3 came to be made with his knowledge or consent. Exhibit A-14 is the true copy of a petition purporting to have been sent by the 4th respondent to the Hon'ble the Minister for Home Affairs, Government of India referring to the omission to include Pulayas of Malabar in the list of Scheduled Castes as per the Constitution (Scheduled Castes) Order, and praying for a declaration that they are members of the Scheduled Castes. The 4th respondent denies having sent such a petition and in the absence of the original, it is not possible to find that the petition was sent by him. Even granting the 4th respondent had sent such a petition, it does not necessarily lead to the inference that the 4th respondent did it because he is a Pulaya. It is quite likely that he would have moved in this matter as one interested in the Pulayas. It is not possible on the strength of the above detailed evidence to find that the 4th respondent is a Pulaya by caste. Thus it is seen that the 4th respondent has produced overwhelming evidence to prove that he is an Adi Dravida and a member of the Scheduled Caste who could contest the election for the reserved seat from the Palghat Parliamentary constituency. A competent local authority, the Sub-Collector, Tellicherry had issued a certificate that the 4th respondent belongs to the Adi Dravida community of the Scheduled Caste, which clinched the objection raised by the 2nd respondent and another to the nomination paper at the time of scrutiny. No attempt is made to assail the correctness of the certificate by citing the person who issued it. Hence the official act of the Sub-Collector has to be presumed to be proper and correct. The burden is heavy on the petitioner to establish that the 4th respondent is not an Adi Dravida and not a member of the Scheduled Caste, but he has failed to establish it. It is immaterial whether others took him to be a Pulaya or referred to him as one in a stray record or two. For the purpose of this enquiry the only question for decision is whether the 4th respondent's nomination as an Adi Dravida was improperly accepted. In the circumstances I find that the 4th respondent is an Adi Dravida, and as such his nomination paper was not improperly accepted.

8. In view of the above finding it is not necessary to go into the merits of the further question raised by the learned counsel for the 4th respondent based on Sections 33 and 100 of the Representation of the People Act, that once a nomination paper has been accepted by the returning officer after due enquiry, and on sufficient materials the question whether a defeated candidate was qualified or not to contest the election cannot be agitated before the Election Tribunal in an election petition by letting in fresh evidence, as the

jurisdiction of the Tribunal in such cases is only that of an appellate court which has only to see if the acceptance of the nomination paper was proper or not.

9. *Issue 5.*—The only other material question for consideration is even if the nomination paper of the 4th respondent was improperly accepted, has it materially affected the result of the election. The relevant allegations are contained in para 19 of the petition. According to the petitioner the acceptance of the nomination paper of the 4th respondent for the reserved seat has caused a division of the votes polled by the contesting candidates and but for it, a substantial portion if not the entire votes polled by the 4th respondent, would have been obtained by the petitioner. There is not even an indication as to the data on which the belief is based. The petitioner in his evidence would come out with the case that the majority of the votes secured by the 4th respondent were given by Pulaya voters, and when he approached the Pulaya voters they told him that of the 2 votes they had, one would be given to the communist candidate and the other to the 4th respondent as he belongs to their own caste. There is not even an attempt to indicate the 'ruth of these interested assertions by examining some one at least of the voters. It is only a matter of speculation and surmise on the part of the petitioner who is a Nair by caste that if the 4th respondent was not on the scene all the Pulaya votes would have gone to him. Respondents 1 and 2 were also candidates for the reserved seat and the petitioner admits that if the 4th respondent had not contested some of the Scheduled Caste voters would have voted for them. As pointed out by Sri Nambiar, the counsel for the 4th respondent, all the votes that the 1st respondent, the returned communist candidate, obtained, the petitioner a communist candidate did not get. There is no evidence as to the number of Pulaya voters and there is no knowing how many of them actually voted at the election or how many voted for the 4th respondent or again how many of these votes turned out to be invalid. The Supreme Court decision in *Fashist Narain Sharma v. Dev Chaud* (1) is completely against the petitioner. As observed by their Lordships the fact that the improper acceptance of the nomination paper has materially affected the result of the election is one that has to be proved and not inferred from speculation and conjecture. "The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by section 100-(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand". In this case the conduct of the petitioner in not objecting to the nomination paper naturally leads to the inference that he was then of the view that its acceptance would not materially affect the result of the election as far as he was concerned, and it was a matter for respondents 1 and 2 the other candidates for the reserved seat who may be prejudiced by the division of the scheduled caste votes between them and the 4th respondent. It was argued on the admission of the 4th respondent that economically he was not in a position to contest the seat for the Palghat Parliamentary constituency as well as the seat for the Manjeri assembly constituency and had no agents in the former, that the object in filing a nomination for the Palghat Parliamentary constituency was to see that the votes were divided, and that is a circumstance which would establish the petitioner's case that but for the 4th respondent's contest the petitioner would have succeeded. No such inference is possible as the 4th

respondent swears that he was the candidate for the Muslim League in the Palghat Parliamentary constituency and the Muslims worked for him. There is absolutely no evidence in support of the petitioner's case that but for this division of votes resulting on the acceptance of the 4th respondent's nomination the petitioner would have secured the whole if not a substantial portion of the votes secured by the 4th respondent. I find that the acceptance of the 4th respondent's nomination has not materially affected the result of the election.

10. The other issues were not argued before me.

11. *Issue 10.*—The only remaining question for consideration is what should be the order regarding the costs of this petition. Though the person to be materially affected by this election petition is the 2nd respondent and so he entered appearance and argued the case, the real contest was by the 4th respondent who has given evidence in the case and also cited witnesses. His conduct was fully justified, as he was interested in repudiating the allegation that he contested the election on a false declaration that he was an Adi Dravida, and thus vindicate his character. The 4th respondent is therefore entitled to separate costs.

ORDER

The election petition is therefore dismissed. It is declared that the nomination of the 4th respondent was not improperly accepted, and that its acceptance has not materially affected the result of the election. The petitioner shall suffer his costs and shall pay the 2nd respondent Rs. 200/- as costs and the 4th respondent Rs. 400/-. The costs allowed is inclusive of advocates' fees and all expenses incidental to the defence of the petition.

(Declared in open court this the 7th day of November, 1957).

(Sd.) ANNA CHANDY, Member,
Election Tribunal, Kozhikode.

[No. 82/262/57.]

By Order,
A. KRISHNASWAMY, AIYANGAR, Secy.